

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

_____	)	
GONZALO LINARES and	)	
BLANCA LINARES,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 16-481 S
	)	
U.S. BANK NATIONAL ASSOCIATION,	)	
et al.,	)	
	)	
Defendants.	)	
_____	)	

**MEMORANDUM AND ORDER**

WILLIAM E. SMITH, Chief Judge.

In the aftermath of a foreclosure proceeding Gonzalo Linares and Blanca Linares ("Plaintiffs") brought suit against their mortgage provider, owner, and servicer ("Defendants"). The allegations in the Complaint include: Count I (Breach of Contract), Count II (Violation of the Covenant of Good Faith and Fair Dealing), Count III (Violation of the Truth in Lending Act), and Count IV (Violation of the Fair Debt Collection Practices Act). (See Amended Compl., ECF No. 1-2.) Defendants moved to dismiss this case under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted. (See Mot. to Dismiss, ECF No. 2.) That matter was referred to Magistrate Judge Lincoln D. Almond for report and recommendation.

As was noted by Magistrate Judge Almond, the Amended Complaint in this case is "substantively identical" to the Amended Complaint in Pemental v. The Bank of New York Mellon, et al., C.A. No. 16-483. (Report and Recommendation 2, ECF No. 14.) The Amended Complaints in Pemental and this case were also removed to federal court on the same day and by the same attorneys. (Id.) Given that the issues presented in both cases are "substantively identical," Magistrate Judge Almond relied primarily on the analysis of Magistrate Judge Sullivan in her Report and Recommendation in Pemental.

In that case, Magistrate Judge Sullivan found that all four claims failed under the Rule 12(b)(6) standard, but recommended that the plaintiff be provided thirty days to correct the deficiencies in the Amended Complaint. (See C.A. No. 16-483, Report and Recommendation, ECF No. 14.) Magistrate Judge Almond, "[a]fter closely reviewing Judge Sullivan's Report and Recommendation in Pemental in the context of the pleadings and arguments set forth in this case," found "her reasoning to be thorough, legally supported and persuasive, and equally applicable in this case." (Report and Recommendation 4, ECF No. 14.) Magistrate Judge Almond therefore "adopt[ed] her recommended disposition and supporting rationale in their entirety." (Id.)

After an independent review of this matter, the Court agrees with Magistrate Judge Almond's recommendation. The Court has already adopted Magistrate Judge Sullivan's Report and Recommendation in Pemental. Based on the facts alleged in the Amended Complaint in this case, the Court finds that the same deficiencies exist as were evident in Pemental. The Report and Recommendation (ECF No. 14) is therefore ACCEPTED. Plaintiffs are provided thirty days from the date of this Order to file an amended complaint that corrects the deficiencies discussed in Magistrate Judge Sullivan's Report and Recommendation in Pemental and adopted in Magistrate Judge Almond's Report and Recommendation in this case.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'WESMITH', is written over a horizontal line.

William E. Smith  
Chief Judge  
Date: August 1, 2017